

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:* Paratransit Insurance Company )  
Intangible Personal Property Account No. P-182441 ) Shelby County  
Tax year 2007 )

### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$158,700	\$63,480

On July 5, 2007, an appeal was filed with the State Board of Equalization ("State Board") on behalf of Paratransit Insurance Company ("PIC"). John Zelinka, counsel to Shelby County Assessor of Property Rita Clark (the "Assessor"), filed a MOTION TO DISMISS the appeal on March 7, 2007.

The undersigned administrative judge conducted a hearing of this matter on March 19, 2008 in Memphis. PIC, which is managed by Marsh USA Inc., was represented by Senior Executive Underwriter Bryan W. Barger, CPCU, ARM. Mr. Zelinka, accompanied by Audit Manager Eric Beaupre, CPA, appeared on the Assessor's behalf.

### Findings of Fact and Conclusions of Law

PIC is a mutual insurance company whose principal office is located at 1000 Ridgeway Loop Road in Memphis.<sup>1</sup> In tax year 2007, Mr. Barger returned the assessment schedule required by Tenn. Code Ann. section 67-5-1206 to the Assessor's office about one week after the March 1 deadline. According to the cover letter from PIC Client Representative Kimberly L. Ballard, the cause of this delay was the unavailability of PIC's annual financial statement (as of December 31, 2006) "until early March."<sup>2</sup> She requested that "any fine potentially due as a result of the schedule being submitted after March 1 be waived."

Alas, the Assessor made a “forced” assessment on the subject account that was not based on the “total surplus funds” entered on PIC’s schedule.<sup>3</sup> The Assessor’s office mailed

<sup>1</sup>As explained by Mr. Barger in an attachment to the appeal form, PIC “owns no land, leases no office space and has no employees.” The stated address is that of Marsh USA Inc.

<sup>2</sup>Ms. Ballard enclosed a copy of the transmittal letter dated March 6, 2007 from PIC's account manager in Vermont (Patricia A. Cote, CPA) to Mr. Barger.

<sup>3</sup>Had he considered such information, Mr. Beaupre testified, the assessment of the subject property would have amounted to \$42,120 instead of \$63,480.



notice of this assessment to the company at the above address on or about April 20, 2007. The notice informed the taxpayer that it "must appeal by 6/29/2007 to correct forced assessment."

Mr. Barger admittedly received this assessment change notice, but "wasn't even sure" as to the meaning of the forced assessment. It never occurred to him, he lamented, that the Assessor's office would disregard the information which had been reported accurately – albeit somewhat belatedly – on the company's schedule.

On June 28, 2007, Kathy Strong of the Assessor's office telephoned PIC's account manager in Vermont (Patricia A. Cote, CPA) and advised her of the imminent deadline for appeal of the forced assessment to the Shelby County Board of Equalization ("county board"). Ms. Strong also "faxed" a copy of the county board's prescribed complaint form to Ms. Cote for her immediate attention. Unfortunately, that form was not filled out and transmitted to the county board before the end of its regular session the next day. Having no other possible administrative recourse, Mr. Barger initiated this appeal.

Generally, an appeal of a forced assessment (or other property assessment) to the State Board must be preceded by a complaint and appearance before the local board of equalization unless the taxpayer was not duly notified of such assessment. However, Tenn. Code Ann. section 67-5-1412(e) affords a taxpayer the right to a hearing to demonstrate "reasonable cause" for failure to appeal to the county board of equalization, or for failure to appeal a county board decision to the State Board in a timely manner. The Assessment Appeals Commission (appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502) has historically construed the quoted term to mean some circumstance beyond the taxpayer's control (such as disability or illness). See, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994); John Orovets (Cheatham County, Tax Year 1991, Final Decision and Order, December 3, 1993).

Clearly, this is not a case where an insurance company subject to the provisions of Tenn. Code Ann. sections 67-5-1201 *et seq.* simply refused or neglected to return its assessment schedule on time. Rather, PIC knowingly deferred its return for several days in the interest of submitting complete and accurate data. It may not have been unreasonable for Mr. Barger to expect that, despite the lateness of the schedule, the assessment would be based on the information he actually furnished. That said, the question at issue remains whether the proof establishes reasonable cause for PIC's failure to appeal the forced assessment of which the company was duly notified (through Marsh USA Inc.) to the county board.

Respectfully, the administrative judge perceives insufficient grounds for a finding of reasonable cause in this instance. In Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993), the Assessment Appeals Commission pointedly proclaimed that:



A taxpayer who has been properly notified of an assessment change....cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal.

*Id.* at p. 2.

Years later, the Commission upheld the dismissal of an untimely appeal to the State Board from a county board of equalization's decision in a year of reappraisal to make "no change" to an assessment. Jessie M. Stovall (Fayette County, Tax Year 2000, Final Decision and Order, June 25, 2003). In response to the appellant's claim that she had misapprehended the decision to mean that there would be no change from the assessment in the *preceding* tax year, the Commission held that:

Ms. Stovall, a person of obvious maturity and judgment, should have either understood the notice or resolved her doubts by contacting the assessor or county board upon receiving the notice. These circumstances do not in our view excuse the taxpayer's failure to act timely in appealing to the State Board.

*Id.* at p. 2.

Likewise, in the opinion of the administrative judge, PIC's manager – surely no less possessed of "maturity and judgment" – had ample opportunity to contact the Assessor's office or the county board regarding any confusion as to the nature of this forced assessment or the procedure for appealing it.

#### Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3<sup>rd</sup> day of April, 2008.

*Pete Loesch*

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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Bryan Barger, Marsh USA, Inc.  
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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